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Friday, May 13, 2005

## Tobacco companies seek lower payouts

Market share lost to cheaper brands

By **Stephanie Stoughton**

The Associated Press

**RICHMOND, Va.** - The nation's largest cigarette makers are questioning past payments they made to states as part of a \$206 billion settlement over health-care costs.

Philip Morris USA, R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co. have said the landmark 1998 settlement forced them to raise prices - a provision of the settlement - contributing to a proliferation of low-cost competitors who took market share.

Because the major players lost market share, they want to know whether last year's payments should be adjusted.

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The companies' requests come as state legislation is targeting cigarette makers operating outside the agreement. Most of the settlement's 46 states have passed measures that essentially force the smaller companies - mostly discounters and regional players - to raise their prices.

Confidential documents obtained by The Associated Press show that Liggett Group Inc. and Commonwealth Brands Inc. - which later joined the agreement - challenged more than \$45 million of their payments due April 15. Both said in letters to the settlement's auditor that the deal allows them certain adjustments if nonparticipating manufacturers increase their market share.

The National Association of Attorneys General, which represents states in the settlement and speaks for the group, did not return a call for comment Thursday.

Mack Caldwell, an analyst for Moody's Investors Service, cited the request by Lorillard and the other companies in a report on Virginia's sale of about \$430 million in settlement-backed tobacco bonds.

More than 10 other participating manufacturers also have contested portions of their payments, according to other letters obtained from the Virginia Attorney General's Office under a Freedom of Information Act request.

But the states are likely more concerned about the three biggest tobacco companies, which have more than 80 percent of the U.S. cigarette market and make up the bulk of the industry's payments to states. This year's payments came to \$6.3 billion.

RJR and Philip Morris spokesmen confirmed that they are requesting reviews of payments covering 2003, but the companies have not cited specific amounts they might be owed.

RJR spokesman David Howard noted that the Winston-Salem, N.C., company paid \$2.06 billion in April 2004. "We're not talking small dollars here," he said.

William Phelps, a spokesman for Richmond-based Philip Morris, owned by Altria Group Inc., said the company does not publicly report its annual MSA payments. But considering that it has about 50 percent of the domestic cigarette market, its annual payments could top \$3 billion a year.

An official at Lorillard, part of New York-based Loews Corp., did not return a telephone call Thursday.



Caldwell said the tobacco companies would receive adjustments only if the settlement contributed to their market-share losses.

Another requirement: It must be shown that the individual states didn't diligently enforce a provision that forces nonparticipating manufacturers to pay money into escrow accounts.

Although the market share of nonparticipating manufacturers grew to 8.1 percent in 2003 from less than 1 percent before the settlement, the states' legislative actions are now apparently taking their toll.

In a speech Wednesday, an executive of Philip Morris parent Altria Group Inc. said deep discounters - which include many companies operating outside the accord - have seen their market share decline slightly.

RJR is a unit of Reynolds American Inc. Shares fell 11 cents to close at \$79 Thursday on the New York Stock Exchange. Altria shares dropped 25 cents to close at \$65.14, and shares of Loews fell \$1.13 to close at \$72.13.

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